

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of: Monteverde)	CUSTOMER NO. 71130
)	
Serial No.: 10/604,147)	Group Art Unit: 3622
)	
Filed: June 27, 2003)	Confirmation No.: 1146
)	
Title: SYSTEM AND METHOD FOR)	Examiner: Jeffrey D. Carlson
ESTIMATING THE GEOGRAPHIC)	
LOCATION OF AN INTERNET USER)	
)	
Attorney)	
)	
Docket No.: 35041-400100)	
)	

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REPLY BRIEF

Sir:

This Reply Brief is hereby filed in response to the Examiner's Answer mailed on August 18, 2010. This Reply Brief is believed to be timely filed and complies with the requirements set forth in 37 C.F.R. § 41.41(a). Authorization is hereby given to charge Deposit Account No. 502896 in connection with any fees that are necessary to permit entry of this Reply Brief.

STATUS OF CLAIMS

Claims 1, 3, 5-15 and 17-23 are pending in the application.

Claims 1, 3, 5-15 and 17-23 are finally rejected.

Claims 1, 3, 5-15 and 17-23 are appealed, and are set forth in the Claims Appendix.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 3, 5, 9-10, 14-15 and 17-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2002/0111172 to DeWolf *et al.* ("DeWolf") in view of U.S. Patent No. 6,516,337 to Tripp *et al.* ("Tripp").

Claims 6-8 and 11-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DeWolf in view of Tripp and further in view of U.S. Publication No. 2003/0009762 to Hooper *et al.* ("Hooper").

Claims 19-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DeWolf in view of Tripp and further in view of U.S. Publication No. 2003/0065805 to Barnes, Jr. ("Barnes").

ARGUMENT

The Rejections Under 35 U.S.C. § 103 Are Improper and Should Be Withdrawn Because No Combination of U.S. Publication No. 2002/0111172 to DeWolf *et al.* (“DeWolf”) and U.S. Patent No. 6,516,337 to Tripp *et al.* (“Tripp”) Teaches Each Claim Element.

Each of the claims in the Application under appeal require estimating a user’s geographic location by matching a visited Internet site to an Internet site in a database of business geographic locations for a plurality of Internet sites. In the Examiner’s Answer, the Examiner erroneously maintains that DeWolf discloses using “a history of Internet browsing in order to determine location-specific advertising relevant to a user’s location.” (*Examiner’s Answer*, p. 6, lines 5-6). Further, the Examiner asserts that “the purpose of DeWolf’s location profile seems precisely aligned with applicant’s purpose.” (*Examiner’s Answer*, p. 6, lines 8-9).

Contrary to the Examiner’s assertions, Appellant respectfully submits that DeWolf discloses detecting where a user is roaming via a wireless network or using a GPS network to determine an observed location of a user, and predicting the user’s vacation location and identifying characteristics of the user based in part on the user’s Internet browsing. More specifically, DeWolf discloses that the “location for your vacation may be predicted based on...external data including...Internet browsing...” and “the subscriber profile 580 could be based on additional subscriber data associated with...Internet browsing...” (*DeWolf*, Paragraph [0087] and [0091]). The use of Internet browsing to predict a user’s vacation location does not disclose or suggest estimating a user’s geographic location at all. The prediction of a user’s vacation location merely seeks to identify a location where a user will take a vacation, not where a user is located.

Further, according to DeWolf, “[t]he subscriber profile 580 identifies characteristics associated with the subscriber 210” wherein the “characteristics may include demographic make-up, psychographic make-up, product preference, service preference, brand preference, and other features.” (*DeWolf*, Paragraph [0089]). Although DeWolf discloses that the subscriber profile 580 could be based on Internet browsing, the profile 580 in DeWolf does not estimate a user’s geographic location at all. Rather, the subscriber profile 580 is used to identify characteristics of the subscriber, while the location of a subscriber, according to DeWolf, is predicted by the location profile 570 based on the observed locations of the subscriber. Thus, Appellant

maintains that DeWolf does not disclose or suggest estimating a user's geographic location by matching a visited Internet site to an Internet site in a database of business geographic locations.

In the Examiner's Answer, the Examiner asserts that the Examiner sees very little if any distinction between "predicts" and "estimates" given the claim language, which the Examiner asserts does not distinguish present location from future location. (*See Examiner's Answer*, p. 6, lines 11-13). "[T]he words of a claim are generally given their ordinary and customary meaning." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005). "[T]he ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Id.* at 1313. Appellant submits that a person of ordinary skill in the art would readily perceive the distinction between the terms "predicts" and "estimates." Appellant respectfully submits that the term "estimating," used in Appellant's claims, is clearly distinct from the term "predict" and the variations thereof used in DeWolf. In DeWolf, "[t]he subscriber activity profile is associated with time parameters as well as a frequency component and can be used to predict an activity prior to the subscriber partaking in it." (*DeWolf*, Paragraph [0021]).

"In some cases, the ordinary meaning of claim language as understood by a person of ordinary skill in the art may be readily apparent..., and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* "In such circumstances, general purpose dictionaries may be helpful." *Id.* Appellant submits that the distinction between the meaning of "estimating" and "predicts" could have easily been determined by simply referencing the definition of each term in a dictionary. For example, The Oxford Dictionary and Thesaurus defines "estimate" as "an approximate judgment,...make a rough calculation..." and defines "predict" as "make a statement about the future..." The Oxford Dictionary & Thesaurus 493, 1173 (Am. ed. 1996).

Additionally, "the context in which a term is used in the asserted claim can be highly instructive." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). Appellant submits that Appellant uses the term "estimating," which is the present participle of the term "estimate," and is not required to separately distinguish between present location and future location in the

claim language. Thus, Appellant maintains that DeWolf predicts and does not disclose or suggest estimating a user's geographic location, as recited in Appellant's claims.

In the Examiner's Answer, the Examiner erroneously maintains that DeWolf uses the geographic locations of businesses a user has visited on the Internet. Specifically, the Examiner asserts that "DeWolf's teaching to choose advertisements according to such a location profile developed because a user has "visited numerous web sites related to the Outer Banks" is taken to indicate that geographic locations (Outer Banks, NC) concerning the internet sites is indeed present." (*Examiner's Answer*, p. 7, lines 3-6).

Contrary to the Examiner's assertion, Appellant maintains that the mere disclosure, in DeWolf, of predicting a vacation location based on a user visiting web sites related to the Outer Banks does not disclose or suggest that the visited web site has a business geographic location in the Outer Banks or that such business geographic locations are used to estimate a user's geographic location. Further, it appears that in creating this obviousness rejection the Examiner gleaned knowledge from the Appellant's disclosure contrary to *KSR*, which states "[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). The particular teachings that the Examiner suggested, in hindsight with the benefit of Appellant's disclosure, in an attempt to arrive at Appellant's claimed invention, are neither taught nor suggested by any of the cited references.

In the Examiner's Answer, the Examiner erroneously states that "DeWolf's Internet-based location detecting clearly teaches toward applicant's invention." (*Examiner's Answer*, p. 8, lines 2-3). Appellant respectfully maintains that DeWolf teaches away from estimating a user's geographic location by matching a visited Internet site to an Internet site in a database of business geographic locations. In contrast to Appellant's disclosure, DeWolf discloses detecting where a user is roaming via a wireless network or using a GPS network to determine an observed location of a user and compiling the user's location history based on the observed locations. Thus, DeWolf has no need to estimate a user's geographic location by matching a visited Internet site to an Internet site in a database of business geographic locations.

In the Examiner's Answer, the Examiner asserts that "Tripp is merely used as an example of a typical database that categorizes websites, and does so at least to some extent using location data." (*Examiner's Answer*, p. 8, lines 8-10). Appellant submits that the Examiner's admission that "Tripp is merely used as an example of a typical database that categorizes websites" further illustrates that the Tripp reference is trivial, and the Examiner's near complete reliance on the DeWolf reference in rejecting the claims as obvious.

Further, Appellant maintains that even if Trip or some other reference discloses a database of business geographic locations associated to particular websites, Appellant submits that combining such a database with the disclosure of DeWolf would not result in a teaching or suggestion of the presently claimed invention. DeWolf has no need to use the business geographic locations associated to particular websites, since DeWolf compiles the user's location history based upon observed locations.

Since no combination of DeWolf and/or Tripp teaches or suggests each and every element of the claims, Appellant respectfully submits that no combination of the references render the claims obvious to one skilled in the art. Accordingly, Appellant respectfully submits that the rejections of the claims under 35 U.S.C. § 103 should be overturned.

CONCLUSION

Claims 1, 3, 5-15 and 17-23 are currently pending in the present application. For the reasons set forth in the Arguments presented herein in addition to the reasons set forth in Appellant's Appeal Brief filed on June 1, 2010, Appellant respectfully submits that all pending claims are distinguishable and patentable over the Examiner's cited references. It is respectfully requested that each of the rejections of claims 1, 3, 5-15 and 17-23 be overturned and that each of the pending claims be allowed.

Respectfully submitted,

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By: /Joseph P. Quinn/
Joseph P. Quinn
Reg. No. 45209
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston MA 02210-2028
Telephone: 617-946-4833
Fax: 617-946-4801
email: bosippto@seyfarth.com

CLAIMS APPENDIX

1. A method of estimating an Internet user's geographic location, comprising:
tracking the Internet user's visits to at least one Internet site promoting a business having a business geographic location thereby defining a visited Internet site;
determining the business geographic location of the business promoted by the visited Internet site thereby defining a matched business location;
estimating the Internet user's geographic location to be at least adjacent to the matched business location and;
providing a database having business geographic location information for a plurality of Internet sites;
wherein the step of determining the business geographic location of the business promoted by the visited Internet site includes matching the visited Internet site to an Internet site in the database thereby defining a matched Internet site and defining the matched business location to be the respective business geographic location of the matched Internet site.
2. (Cancelled)
3. The method as claimed in claim 1 wherein the business geographic location information is determined by an operator of each respective Internet site.
4. (Cancelled)
5. The method as claimed in claim 1 wherein the matched business location is determined by calculating the business geographic location most often matched.
6. The method as claimed in claim 5 wherein the step of tracking the Internet user's visits to at least one Internet site having a business geographic location includes tracking the amount of time the Internet user remains on the Internet site.

7. The method as claimed in claim 6 wherein the step of tracking the Internet user's visits to at least one Internet site having a business geographic location includes disposing a cookie having a unique identifier on a computer system that the Internet user is using to access the Internet.

8. The method as claimed in claim 7 further comprising providing an Internet user database for recording the matched business location and correlating it to the cookie.

9. A method of estimating an Internet user's geographic location, comprising:
providing a database having respective business geographic location information for a plurality of Internet sites;

tracking the Internet user's visits to a plurality of Internet sites thereby defining a plurality of visited Internet sites;

matching at least one visited Internet site to an Internet site in the database thereby defining a matched business geographic location;

comparatively determining the matched business geographic location having the most matches thereby defining a most popular business geographic location; and

estimating the Internet user's geographic location to be adjacent to the most popular business geographic location.

10. The method as claimed in claim 9 wherein an operator of the respective Internet site determines the business geographic location information.

11. The method as claimed in claim 9 wherein the step of tracking the Internet user's visits to a plurality of Internet sites includes tracking the amount of time the Internet user remains on the Internet site.

12. The method as claimed in claim 11 wherein the step of tracking the Internet user's visits to a plurality of Internet sites includes disposing a cookie having a unique identifier on a computer system that the Internet user is using to access the Internet.

13. The method as claimed in claim 12 further comprising providing an Internet user database for recording the most popular business geographic location and correlating it to the cookie.

14. A system for estimating the geographic location of an Internet user, comprising:
a database having respective business geographic location information for a plurality of Internet sites;

a means for tracking Internet sites that the Internet users visits, thereby defining a plurality of visited Internet sites; and

a means for estimating the Internet user's geographic location by matching each visited Internet site with an Internet site in the database and assigning each visited Internet site the respective corresponding business geographic location information for the matched Internet site in the database.

15. The system as claimed in claim 14 wherein the means for tracking Internet sites includes disposing a cookie on a computer system that the Internet user is using to access the Internet.

16. (Cancelled)

17. The system as claimed in claim 14 wherein the means for estimating the Internet user's geographic location further includes a system for quantitatively determining a most popular geographic location.

18. The system as claimed in claim 17 wherein a means for estimating the Internet user's geographic location includes a system for estimating the Internet user's geographic location to be the most popular geographic location.

19. A method of providing Internet search results based upon the estimated geographic location of an Internet user, comprising:

providing a database having respective business geographic location information for a plurality of Internet sites;

tracking the Internet user's visits to a plurality of Internet sites thereby defining a plurality of visited Internet sites;

matching at least one visited Internet site to an Internet site in the database thereby defining a matched business geographic location;

comparatively determining the matched business geographic location having the most matches thereby defining a most popular business geographic location;

estimating the Internet user's geographic location to be adjacent to the most popular business geographic location thereby defining an Internet user location;

receiving an Internet search request from the Internet search user; and

displaying search results for Internet sites having a geographic business location adjacent to the Internet user geographic location.

20. The method as claimed in claim 19 wherein the step of tracking the Internet user's visits to a plurality of Internet sites includes disposing a cookie having a unique identifier on a computer system that the Internet user is using to access the Internet.

21. The method as claimed in claim 20 further comprising providing a database for recording the Internet user location and correlating it to the cookie.

22. The method as claimed in claim 19 wherein the step of displaying search results for Internet sites having a geographic business location adjacent to the Internet user location includes prioritizing the search results based upon the amount of money each respective Internet site is willing to pay for being displayed.

23. The method as claimed in claim 22 wherein the amount of money each respective Internet site is willing to pay for being displayed includes a pay-per-click bidding system.

24. - 26. (Cancelled)